

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
July 1, 2004)	WCB/Pricing 04-18
Annual Access Charge Tariff Filings)	
)	Transmittal No. 18
Madison River Telephone Company)	
Tariff F.C.C. No. 1)	

REPLY

Madison River Telephone Company (Madison River), pursuant to section 1.773 of the Commission's rules, 47 C.F.R. § 1.773, submits this Reply to petitions filed by AT&T Corp. (AT&T)¹ in the above-captioned proceeding.

AT&T requests that the Commission suspend and investigate Madison River's June 24, 2004 tariff filing (Transmittal No. 18). Madison River made that filing on behalf of Gulf Telephone Company and Gallatin River Communications. Section 1.773 of the Commission's rules requires petitioners seeking suspension or rejection of a tariff filing to demonstrate that the challenged filing raises substantial questions of lawfulness, and must provide specific reasons why the proposed tariff revisions warrant investigation, suspension, or rejection. For the reasons discussed below, the petitions do not meet this standard. Each petition should be denied, and Madison River's proposed tariff revisions should be allowed to become effective as filed.

¹ Petition of AT&T Corp. (filed June 23, 2004) (*AT&T Petition*).

I. THE COMMISSION SHOULD DISMISS AT&T's PETITION FOR FAILURE TO SHOW SPECIFIC REASONS WHY THE PROTESTED TARIFF FILING WARRANTS SUSPENSION AND INVESTIGATION.

AT&T asserts primarily that Madison River's *previous* tariff rates have produced excessive earnings. Past tariff rates have no bearing on the rates proposed in Transmittal No. 18, which have been recalculated in order to produce earnings targeted to authorized levels. AT&T presents almost no specific claims with respect to Madison River's present rate calculations.² Both the Communications Act and the Administrative Procedures Act (APA) require the Commission to have some reasoned basis for taking action with respect to a tariff. Evidence that some other tariff may have included inaccurate forecasts cannot be relied upon as a basis for suspending and investigating the proposed rates. Accordingly, to the extent that AT&T relies on evidence of prior earnings reports as a basis for their claims, the Commission must deny their petitions.

Even accepting, for the sake of argument, AT&T claims regarding prior earnings reports, the Commission should refrain from relying on such data as justification for suspension of Madison River's tariff.

To begin with, AT&T ignores the fact that Madison River's filing proposes a \$3,931,000 reduction in switched access rates. This reduction exceeds AT&T's implied request for rate reductions of \$3,000,000 for Gulf and Gallatin River.³ These significant

² GCI alleges that there are a few flaws in Madison River's current demand projections. *See, e.g., GCI Petition* at 3-4. While theoretically relevant, these claims are without merit and do not warrant suspension of any portion of Transmittal No. 1030.

³ See AT&T Petition, Exhibit C, in which AT&T estimates "2003 Period Rate-of-Return Over Earnings" for Gallatin River at \$1,243 and for Gulf Telephone at \$1,757.

reductions make clear that Madison River is, in fact, reacting appropriately to manage its tariff rates so that they earn at no more than authorized levels.

In any event, evidence from prior period earnings reports is particularly irrelevant in the current telecommunications environment. As the Commission is well aware, the industry is becoming increasingly volatile. Madison River faces tremendous unknowns due to new technologies, competition from new market players, new regulatory mandates, economic uncertainty, and a broad variety of other unprecedented factors that make earnings results harder than ever to predict.

Over recent years the industry has seen a dramatic rise in CMRS traffic⁴ and Internet usage,⁵ each of which, to an extent, has supplanted incumbent LEC real-time voice communications offerings and contributed to the decline in access lines and growth in minutes of use. While still a small market segment, Voice over Internet Protocol (VoIP) appears to be gaining traction.⁶ These factors and others make forecasting exceedingly difficult using current data, and render prior earnings reports —the sole data presented by AT&T — of little use as a predictor of future earnings.

AT&T alleges that Gallatin River Communications has understated its projected

⁴ CMRS subscribers have surpassed wireline incumbent LEC access lines, by more than five million, as incumbent LEC lines continue to drop. FCC, “Local Telephone Competition: Status as of December 31, 2003,” (Jun. 2004), Tables 1 and 13.

⁵ The number of high-speed Internet access lines jumped twenty percent in only six months, from June to December 2003. FCC, “High-Speed Services for Internet Access: Status as of December 31, 2003,” (Jun. 2004), Table 1.

⁶ Vonage, for instance, claims to be providing service to 170,000 “lines” (making over 5 million calls per week), while adding more than 20,000 lines per month to its network. See http://www.vonage.com/corporate/press_index.php?PR=2004_06_11_0 (viewed Jun. 25, 2004). At the same time, it seems that every major carrier and cable TV company is offering, or planning to offer, a VoIP service.

demand for Local Switching for the 2004/2005 tariff period. AT&T reviews actual usage of Gallatin River (192 million minutes for year 2000, 192 million minutes for 2001, 203 million minutes for 2002 and 173 million minutes for 2003), which show a 15% decrease in Local Switching minutes from 2002 to 2003. By using the largely irrelevant prior year data, AT&T “trends” to increase to 179 million minutes in 2004 and 173 million minutes in 2005. It then uses this “trended” data to estimate the demand for the tariff periods 2003/2004 and 2004/2005.

Gallatin River’s 2003 Local Switching minutes decreased by 15% from the prior year. This is the single relevant predictor of access minutes in 2004 and 2005. Gallatin River projects its 2004/2005 tariff period minutes to decline by 15% from calendar year 2003. This change represents about a 10% annualized decrease in Local Switching usage because the test period extends to eighteen months into the future.⁷ Further supporting Gallatin River’s projected decrease in 2004/2005 tariff period Local Switching minutes is the fact that access lines have decreased from 79,286 at January 1, 2003 to 75,910 access lines at December 31, 2003. Access lines continue to decrease during 2004. In addition, Gallatin River serves an economically distressed area in rural Illinois. For example, one of the main employers in the area, Maytag, has decided to close its Galesburg Refrigeration Plant, resulting in the direct loss of 1600 jobs, and more counting the ripple effect. This plant closure is expected to be complete by the end of 2004. The second largest employer in Galesburg, Butler Manufacturing, has announced it will close its Galesburg plant by the end of 2005, resulting in the direct loss of an additional 320 jobs, not counting additional job losses due to the ripple effect.

⁷ Five percent reduction for the first half of 2004, and ten percent reduction during the test year, or 15% reduction over eighteen months.

II. THE COMMISSION SHOULD NOT USE THE SUSPENSION REMEDY SET FORTH IN SECTION 204(A) OF THE COMMUNICATIONS ACT TO SUBVERT THE STATUTORY PROTECTION AFFORDED STREAMLINED TARIFFS.

AT&T's real concern is evident. Because Madison River's filing was made on a streamlined basis, petitioners recognize that it must therefore be treated as "deemed lawful" under section 204 of the Act, and that refunds for potential overearnings may be unavailable once the tariff is permitted to become effective.⁸ In effect, AT&T is asking the Commission to suspend Madison River's tariff "just in case" the proposed rates turn out to be too high.

Use of the Act's suspension remedy in this manner is patently unjustified. The 1996 Act revised section 204 of the Act specifically to permit carriers to make filings on a streamlined basis and to have those filings be "deemed lawful." As the Commission itself and courts recognize,⁹ these revisions to the statute could only have been intended to make it faster and easier for carrier-initiated tariffs to become effective and to be insulated from refund liability once in effect. In asking for the opposite result, AT&T essentially suggests that the Commission should routinely suspend all tariff filings in order to prevent them from attaining "deemed lawful" status.

The sham nature of such suspensions is readily apparent given the explicit

⁸ *GCI Petition* at 1 ("Once this tariff takes effect, having been filed on 15 days notice, there will be no possibility of refunds as a remedy for overearnings generated for the period that the instant tariffed rates are in effect."); *AT&T Petition* at 6 ("retroactive refunds are no longer available after a tariff is permitted to take effect without suspension because the tariff is then "deemed lawful". . . . In these circumstances, ratepayers can only seek relief on a prospective basis.. . .").

⁹ *See, ACS of Anchorage, Inc. v. F.C.C.*, 290 F.3d 403, 410-412 (D.C. Cir. 2002); *Implementation Of Section 402(B)(1)(A) Of The Telecommunications Act Of 1996*, CC Docket No. 96-187, 12 FCC Rcd 2170, ¶¶ 18-24 (1997) (*Streamlined Tariff Order*).

procedural requirements of section 204. That portion of the Act permits the Commission to suspend a tariff for a maximum of five months,¹⁰ and requires that the Commission conclude investigations of suspended tariffs within five months after the tariffs are permitted to become effective.¹¹ Since the supposed object of the proposed investigation would be to determine whether the rates in fact produce overearnings, AT&T & GCI presumably would have the Commission suspend Madison River's tariff for a minimum period (*i.e.*, one day), allow the revised rates to go into effect, and then determine what earnings are actually produced. In that case, however, the Commission would need to conclude its investigation by December 2, 2004—before the tariff monitoring period even ends, and long before final Form 492 reports become available.

The only purpose for suspending the tariff, then, would be to strip it of its “deemed lawful” status under section 204(a). The Commission has previously recognized that it has an obligation to give effect to the express language of the statute in this regard,¹² even though the legal consequences for tariff filings under Section 204 would therefore “change significantly.”¹³ It should not allow itself to be drawn into such a transparent attempt to subvert the intent of Congress via the expedient of suspending tariffs without basis.

¹⁰ 47 U.S.C. § 204(a)(1).

¹¹ 47 U.S.C. § 204(a)(2)(A).

¹² *Streamlined Tariff Order* at ¶ 19.

¹³ *Streamlined Tariff Order* at ¶ 20.

III. AT&T's Interpretation that Gulf Telephone Company Rates Reflect Cash Working Capital in Excess of the 15-day Allowance Is Incorrect

AT&T requests that the Commission suspend or order adjustments for the proposed rates filed by Gulf Telephone Company due to alleged overstatement of the Cash Working Capital allowance. Gulf included Cash Working Capital (CWC) in the revenue requirement based on application of the 15-day standard allowance method for Class B companies as allowed in §65.820.(d), on a "total company approach." AT&T's recalculation of the 15-day allowance is based on applying the 15-day allowance method to separated interstate cash expenses and excluding operating taxes from its calculation. Under the total company approach, carriers calculate CWC by applying the 15-day standard allowance factor ($15/365 = 4.1096\%$) to unseparated total company expenses (adjusted for non-cash expenses) and, in turn, allocating a portion of the total company CWC allowance to interstate based on the relative interstate expenses less non-cash items pursuant to Section 36.182.¹⁴ Exhibit I summarizes the calculation of CWC under the total company approach as used for the annual filing with comparison to AT&T's calculations.

The total company approach to calculation of CWC conforms to FCC rules and is specifically supported as an acceptable method by the National Exchange Carrier Association (NECA).¹⁵ Although an issuing carrier for Madison River Telephone Company Tariff FCC No. 1 under which they bill traffic sensitive and special access, Gulf is a member of the NECA common line pool and bill common line charges based on reference to NECA Tariff FCC No. 5. Thus, Gulf submits annual cost studies to NECA

¹⁴ 47 CFR § 36.182(a) "The amount for cash working capital, if not determined directly for a particular operation, is apportioned among the operations on the basis of total expenses less non-cash expense items."

¹⁵ NECA Cost Issues Manual – Separations Cost Issue 7.2, Revised June, 1998

for purposes of settlement of revenue requirement against billed common line revenues. Because Gulf submits cost studies to NECA, they are subject to review of cost studies by NECA and direction by NECA regarding application of FCC rules, procedures and policies to the performance of cost studies for the purpose of determining interstate common line revenue requirements.

Following is an excerpt from NECA Cost Issues Manual-Separations Cost Issue No. 7.2 supporting the reasonableness of the total company approach.

Analysis

A total company approach to the Simplified Lead-Lag or the Standard Allowance method is not mentioned in Part 65. However, Section 36.182(a) of the Commission's rules discusses the apportionment of total company CWC. "The amount for cash working capital, if not determined directly for a particular operation, is apportioned among the operations on the basis of total expenses less non-cash expense items. 47 C.F.R. § 36.182(a) NECA supports the Simplified Formula method and the Standard Allowance method using a total company expense base. There are two advantages associated with the total company approach. First, a total company approach is easier to calculate, since it allows readily available total company "cash" income tax and expense information to be used. Second, the circular problem that arises from using normalized income taxes is eliminated since only current period income tax amounts are included. In addition, analysis indicates that the total company approach yields results similar to those obtained under the current Standard Allowance method.¹⁶

Assuming that CWC were to be calculated based on application of the allowance method factor to separated interstate expenses, AT&T's recalculation is faulty inasmuch as it fails to include income taxes (see Exhibit I). The total company approach to calculation of CWC is accepted industry practice, not inconsistent with the Commission's rules and otherwise reasonable. Therefore, the Commission should not take any action directed at Gulf with respect to AT&T's CWC allegations. Madison River subsidiaries have taken a consistent approach in calculation of CWC. In some cases the total

¹⁶ NECA Cost Issues Manual, Separations Cost Issue No. 7.2, Cash Working Capital, Page 4.

company approach generates higher CWC and in other cases it produces a lower CWC, as at Gallatin River, where AT&T did not find fault with the CWC computation.

IV. CONCLUSION

AT&T has failed to provide sufficient basis for suspending and investigating Madison River's 2004 annual tariff filing. Petitioner has not adequately challenged the lawfulness of Madison River's tariff, or met the standards of section 1.773 to warrant suspension and investigation of the tariff filing. Madison River's tariff filing should therefore be allowed to become effective on July 1, 2004, the scheduled date.

Respectfully submitted,

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